Agenda Item 33 (ID#5363)

State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : February 23, 2006

To : The Commission
(Meeting of March 2, 2006)

From : Laurence G. Chaset, Legal Division
Billie Blanchard, Energy Division
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Subject : Staff Seeks Authority to File Comments in Response to the Department of Energy's Notice of Inquiry, Considerations for Transmission Congestion Study and designation of National Interest Electric Transmission Corridors, issued February 2, 2006.

INTRODUCTION

On February 2, 2006, pursuant to Section 1221(a) of the Energy Policy Act of 2005 ("EPAct"), the Department of Energy ("DOE") issued a Notice of Inquiry ("NOI") seeking comments and information concerning its plans for an electricity transmission congestion study and possible designation of National Interest Electricity Transmission Corridors ("NIETCs"). Specifically, DOE is seeking comment on criteria for gauging the suitability of candidate geographic areas as NIETCs.

Staff seeks the Commission's authorization to file comments on DOE's NOI. These comments must be submitted by March 6, 2006. However, because of the time constraints under which we are operating, staff will need further time to fully develop its comments. We are accordingly seeking the Commission's approval to submit comments that are consistent with the various policy points set forth below.

BACKGROUND

DOE's NOI points out that the Nation's electric system includes over 150,000 miles of interconnected high-voltage transmission lines that link generators to load centers; and that the electric system has been built by electric utilities over a period of 100 years, primarily to serve local customers and support reliability, but that the system generally was not constructed with a primary emphasis on moving large amounts of power across multi-state regions. Due to a doubling of electricity demand and generation over the past three decades and the advent of wholesale electricity markets, transfers of large amounts of electricity across the grid have increased significantly in recent years. This increase in regional electricity transfers saves electricity consumers billions of dollars, but significantly increases transmission facility loading. However, investment in new transmission facilities has not kept pace with the increasing economic and operational importance of transmission service. Moreover, congestion in the transmission
system impedes economically efficient electricity transactions and in some cases threatens the system's safe and reliable operation.

EPAct, as well as DOE's National Transmission Grid Study (May 2002), and the Secretary of Energy's Electricity Advisory Board's Transmission Grid Solutions Report (September 2002), recommended that DOE address regulatory obstacles in the planning and construction of electric transmission and distribution lines. In exercising the Secretary's authority to designate NIETCs, EPAct Section 1221 states that the Secretary may consider, among other things, whether:

> (A) The economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;
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> (B)(i) The economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) A diversification of supply is warranted;
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> (C) The energy independence of the United States would be served by the designation;
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> (D) The designation would be in the interest of national energy policy; and
>
> (E) The designation would enhance national defense and homeland security.

If the Secretary designates an area "experiencing electric energy transmission capacity constraints or congestion" as an NIETC, Section 1221 authorizes the Federal Energy Regulatory Commission ("FERC") to issue permits for the "construction and modification of electric transmission" in the NIETC, provided that FERC finds that certain conditions have been met.

DISCUSSION

Based on its review of DOE's NOI, staff is of the view that it should file comments covering the following points:[1]

Procedural Issues

The designation of NIETCs is one link in a chain of connected actions. DOE should not finalize criteria for the designation of NIETCs until DOE and FERC have defined in detail all the links in the chain of actions that will implement Section 1221. Along these lines, DOE should recommend rules and procedures that specify how the responsibilities of federal agencies for review will be coordinated, how agencies will meet a one-year deadline, and how federal review will mesh with state siting processes. DOE should also establish procedures to fulfill its agency coordination responsibilities. For example, DOE should specify how it will advise FERC whether a sponsor's project falls within a corridor and under what conditions a permit should be issued.

Any corridors that are eventually designated must have some parameters. A specification like "Montana to Los Angeles" is too vague and invites abuse, particularly since the condemnation of private property is involved. With such a vague designation, a sponsor could propose a line virtually anywhere and claim it is in the NIETC. Without some parameters limiting and specifying the NIETC's location, no one can tell whether a given proposed project would be in the corridor or not.

Any final NIETC designation criteria must be accompanied by administrative procedures explaining how the Secretary will apply such criteria. Given the vagueness of the statutory criteria the Secretary may use to designate NIETCs, it is important that DOE develop specific criteria for evaluating candidates for NIETC designation and written procedures on how the Secretary will apply such criteria in corridor designation decisions. Since corridor designations can lead to federal preemption of state laws and condemnation of private lands, these procedures should provide opportunity for the states

[1] Staff notes that the Western Governor's Association (along with the Western Interstate Energy Board and the Committee on Regional Electric Power Cooperation) (collectively, "WGA") is proposing to submit comments, which, based on the drafts reviewed so far, Staff agrees with and recommends that the Commission support. Some of the points covered in the main text of this Discussion are expected to be incorporated into WGA's comments.

and public to comment on a proposed NIETC designation by the Secretary, should require that NIETC designations be based on a preponderance of the evidence and should be subject to a high standard of review.

Finally, DOE should give greater weight to findings of persistent congestion, and findings of physical congestion should guide the Department's conclusions on congested paths. In the Western Interconnection, the principle indicator of physical congestion should be a comparison of historical flows and Operating Transfer Capacity.

Coordination of the Section 1221 Process with the Section 368 Process

Under Section 368 of EPAct, various federal agencies, in collaboration with state, tribal and local governments are engaged in a process of designating corridors for oil, gas and hydrogen pipelines, and electric transmission through federal land in the 11contiguous Western states. This Section 368 process needs to be coordinated with the separate Section 1221 process for designating NIETCs. The Section 368 process is currently engaged in a 2-year study, which includes detailed analysis of potential routes under the National Environmental Policy Act ("NEPA"). An interagency planning group has been established in California to provide input into the Section 368 energy corridor NEPA process. A CPUC representative is attending these meetings along with other state and federal agencies, including the California Energy Commission, the Bureau of Land Management, the United States Forest Service, the State Lands Commission, the National Park Service, the US Air Force, and the US Marine Corps.

Coordination between the two separate corridor designation processes is critical, because if a given potential corridor is not designated under the Section 368 process, it should certainly not be included in an NIETC. Moreover, any designated NIETC will also have to be subject to NEPA review before FERC could subsequently consider approving applications to construct transmission in that corridor. Therefore, coordination between these two corridor designation processes is necessary to eliminate duplicative environmental review efforts, and to ensure that one process does not get too far ahead of the other.

Because the Section 368 process is specific to the Western states, it is necessary that any potential NIETCs in the West be looked at in coordination with the multi-use corridor designation process taking place under Section 368. No corridor designation in the West should receive a final designation as an NIETC until the 368 process – including all necessary environmental reviews – is completed. Staff is concerned that in conducting its NIETC designation process, DOE may overlook the importance of coordinating these two processes, because Section 368 applies in the West with its extensive federal lands, whereas there is relatively little public land in the East, where the more serious transmission constraints exist. Also, in the West, transmission corridors are

generally much longer than in the East, which significantly enhances the likelihood that a potential NIETC will necessarily run through public lands.

Deference to Existing Transmission Planning Processes in the West

In the Western Interconnection, we have a well-developed planning process. Various collaborative regional and sub-regional transmission planning efforts (including, but not limited to, SSG-WI, RMATS, STEP and SWAT) have already resulted in the identification and designation of major transmission upgrades, and a number of specific projects resulting from these planning efforts are already in the active permitting process at the state level. Nothing that DOE does in its NIETC designation process should undermine or seek to trump these on-going, active state and regional efforts in the Western Interconnection. It is up to the states to solve their transmission planning and siting problems first. Federal agencies should not intervene in the development of needed new transmission on the state or regional level unless and until there is a demonstrated need for them to do so.

Moreover, in California, we are actively engaged in a process, through the California ISO, for mitigating transmission congestion in this state. Accordingly, any action that DOE or FERC takes with regard to the possible designation of NIETCs in California needs to await the outcome of the implementation of the California ISO's MRTU process. DOE and FERC should allow MRTU to have a reasonable opportunity to mitigate congestion before any action is taken on any transmission corridors identified as NIETCs on the basis of existing congestion.

Deference to State Energy Policies

There is a need for an exhaustive examination of any and all proposed transmission projects at the state level before a proposed project should be able to rely on a DOE designation of an NIETC in order to seek to trump state siting authority. For this reason alone, DOE should make no final decision on criteria for the designation of any NIETC until both it and FERC have established rules and procedures to implement section 1221 in its entirety. (For example, FERC will need to establish rules about the contents of applications, the designation of when the one-year clock begins, and whether and how it will consider non-wires alternatives to particular proposed transmission projects seeking to rely on an NIETC designation.)

Similarly, the calculation of savings to consumers from projects to be built in NIETCs should reflect state energy policies as enacted in state law, as well as a review of the resource plans of relevant load serving entities. The designation of an NIETC effectively short-circuits the consideration of non-transmission alternatives. In some cases, load-based generation and demand-side actions can be more cost-effective

solutions to congestion. Once DOE designates an NIETC and a transmission project application is received in a designated corridor, then the state siting process has been compromised and the ability to consider alternatives effectively constrained. The process that DOE develops to implement NIETCs must recognize this potential for causing disruption to legitimate state resource planning processes. In particular, the process by which FERC may issue a permit to construct a transmission project within a NIETC if a state has not approved the project within one year of an application must fully recognize and allow for the state's specific reasons for not approving the project in the first place, including consideration of alternatives.

DOE Should Not Overlook Financing Constraints

In many instances, financial issues, not siting, are the real obstacle to transmission line development. This is more of a problem in the East than in the West. For FERC to have the possibility to preempt states on siting without there being a solution to the financing problem would be premature and useless. It would needlessly disillusion local stakeholders without improving the outlook for needed transmission line development. Accordingly, FERC should not exercise its preemption authority for any proposed project until the developer has produced clear evidence that it has all relevant financing issues, including rate and cost allocation issues, solved for its project.

ACTION REQUESTED:

Legal Division and Energy Division request authorization to submit comments on DOE's NOI that are consistent with the foregoing discussion. Since comments will not be due for several weeks, staff is still developing its proposed comments. However, when finalized, staff's comments will simply elaborate upon the points discussed above in more detail.

Assigned Staff: **Laurence Chaset (LAU, 5-5595); Billie Blanchard (BCB, 3-2068); Kirk Bracht (KWB, 3-2868); Keith White (KWH, 5-5473)**.